

**Clarke v Berdon**

2019 NY Slip Op 35042(U)

November 8, 2019

Supreme Court, Bronx County

Docket Number: Index No. 22303/2019E

Judge: John R. Higgitt

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: I.A.S. PART 14

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SHERNETTE CLARKE,

Plaintiff,

DECISION AND ORDER

- against -

Index No. 22303/2019E

MATTHEW P. BERDON and ANDREW M. BERDON,

Defendants.  
-----X

John R. Higgitt, J.

Upon plaintiff's July 18, 2019 notice of motion and the affirmation, affidavit and exhibits submitted in support thereof; defendants' October 9, 2019 affirmation in opposition and the exhibits submitted therewith; plaintiff's October 9, 2019 affirmation in reply; and due deliberation; plaintiff's motion for summary judgment on the issue of defendants' liability for causing the subject accident and for dismissal of defendants' affirmative defense alleging plaintiff's comparative fault is granted.

This is a negligence action for personal injuries plaintiff allegedly sustained as a result of a motor vehicle accident that occurred on July 20, 2018. In support of her motion plaintiff submits the pleadings, the police accident report, and her affidavit. Plaintiff averred that she was traveling northbound on Ridge Hill Boulevard near its intersection with Otis Drive, when defendants' vehicle, which was traveling in the opposite direction (southbound on Ridge Hill Boulevard), made a sudden left turn onto Otis Drive, directly in front of plaintiff's vehicle, causing a collision.

Vehicle and Traffic Law § 1141 states that "[t]he driver of a vehicle intending to turn to the left within an intersection... shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate

hazard” (*Cardona v Fiorentina*, 149 AD3d 495, 495 [1st Dept 2017]). A party can demonstrate his or her entitlement to summary judgment by “showing that [he or she] had a green light in [his or her] favor before and after [he or she] entered the intersection, and the other party made a left turn into the path of the oncoming vehicle, causing the collision” (*id.*). A driver who has the right of way is entitled to anticipate that the vehicle turning left will obey the traffic laws requiring the left-turning vehicle to yield the right of way (*see Dinham v Wagner*, 48 AD3d 349, 350 [1st Dept 2008]).

In opposition to plaintiff’s prima facie showing of entitlement to judgment as a matter of law on the issue of defendants’ liability, defendants failed to raise a triable issue of fact. Defendants submit the affidavit of defendant Matthew P. Berdon; however, the affidavit is inadmissible because it is unsworn and unsigned by that defendant. Defendants assert that the motion should be denied as questions of fact exist as to how the accident occurred because at the time of the accident defendant Matthew P. Berdon had a green light in his direction of travel. However, the fact that defendant Matthew P. Berdon had a green light in his favor when he attempted to make the left turn does not create an issue of fact as to defendants’ liability (*see Griffin v Pennoyer*, 49 AD3d 341 [1st Dept 2008]).

The aspect of plaintiff’s motion seeking dismissal of defendants’ first affirmative defense alleging plaintiff’s comparative fault is granted. The evidence established, prima facie, that she is free of comparative fault, and defendants offered no evidence in admissible form suggesting that plaintiff bears any such fault.

Accordingly, it is

ORDERED, that the aspect of plaintiff’s motion seeking summary judgment on the issue of defendants’ liability for causing the subject motor vehicle accident is granted; and it is further

ORDERED, that the aspect of plaintiff's motion seeking summary judgment dismissing defendants' first affirmative defense alleging plaintiff's comparative fault is granted and that defense is dismissed; and it is further

ORDERED, that the Clerk of the Court shall issue a case scheduling order on **December 20, 2019**.

This constitutes the decision and order of the court.

Dated: November 8, 2019

  
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John R. Hight, A.J.S.C.